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WHATCOM COUNTY
WASHINGTON
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

CROWN POINT DEVELOPMENT
(BELLINGHAM), a Washington
Corporation, and CROWN POINT
HOLDINGS, INC., a Washington
corporation,

Plaintiffs,

vs.

CITY OF BELLINGHAM,
a municipal corporation,
Defendant.

No.

10 2 00475 7

COMPLAINT FOR RETURN OF
PROPERTY, UNCONSTITUTIONAL
TAKING, AND DAMAGES

Judge

COME NOW, the Plaintiffs CROWN POINT DEVELOPMENT
(BELLINGHAM), a Washington Corporation, and CROWN POINT HOLDINGS,
INC., a Washington corporation, jointly referred to herein as the "Developer", by and
through their attorney of record Douglas K. Robertson, and set forth the following
claims against Defendant City of Bellingham ("City").

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I. PARTIES

1.1 Plaintiff Crown Point Development (Bellingham) is a Washington corporation having undertaken and completed all of the obligations necessary to operate and do business in Whatcom County, Washington.

1.2 Plaintiff Crown Point Holdings is a Washington corporation having undertaken and completed all of the obligations necessary to operate and do business in Whatcom County, Washington.

1.3 Defendant the City Of Bellingham is a municipal corporation located in Whatcom County, Washington.

II. JURISDICTION AND VENUE

2.1 Jurisdiction and venue is appropriate in Whatcom County Superior Court in that the parties reside and do business in Whatcom County, Washington and the real property at issue is in Whatcom County, Washington.

III. FACTUAL BACKGROUND

3.1 Developer owns certain real property located in Whatcom County, Washington known as Orchard Estates (“the Property”). Developer had obtained certain entitlements for the Property by and through the Orchard Estates Preliminary Plat (“the Project”). The Property is located in the City of Bellingham.

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3.2 A condition of the Orchard Estates Preliminary Plat was that there be a second access to the development. Though Developer disagreed with the imposition of this condition, it did not appeal such condition.

3.3 Through development of Phase III of the Project, second access to the Project was developed through the Acalin Short Plat.

3.4 In 2003, Developer wished to modify the Orchard Estates Preliminary Plat. Such modification included changing the phasing of the Project.

3.5 Notwithstanding the existing second access to the Project through Acalin Short Plat, the City required (as a condition of the amendment of the preliminary plat) that Developer pay to the City \$75,000 and dedicate to the City a lot in Phase IV of the Project. There was a hearing before the City Council upon which these matters were discussed. Both staff and City Council confirmed that the required payment of \$75,000 and dedication of the lot was for the future development of another second access to the Project. Though the Developer adamantly disagreed with this requirement as being redundant, the economic practicalities of the Project prohibited appealing this condition. Instead, the Developer did pay the City the \$75,000 and did dedicate and deed Lot 22 ("the Lot") to the City as part of the requirements for completion of final plat approval.

3.6 During the ensuing five plus years, the City failed to expend the \$75,000 or utilize the Lot for its intended purpose, to wit: second access to the Orchard Estates Project.

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3.7 On or about August 3, 2009, the Developer placed demand upon the City to refund the \$75,000 and return the Lot to Developer pursuant to RCW 82.02.020 *et seq.*

3.8 In response to that and subsequent demands, the City did in fact refund the \$75,000 plus applicable interest. This refund was made pursuant to RCW 82.02.020.

3.9 Notwithstanding the foregoing, the City has and continues to refuse to return the Lot to Developer. The City is believed to be asserting that the Lot was not dedicated pursuant to RCW 82.02.020 and is therefore not subject to the provisions therein for return.

3.10 Developer has and it continues to incur damages from the City's unconstitutional taking of the Lot in the first place as well as the City's continuing refusal to return the same.

IV. FIRST CAUSE OF ACTION

RETURN OF PROPERTY PURSUANT TO RCW 82.02.010 ET SEQ

4.1 Plaintiffs Developer re-allege all of the foregoing paragraphs.

4.2 Defendant City's original requirement to dedicate/convey the Lot to the City was ordered pursuant to RCW 82.02.010 *et seq.*

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4.3 The City has failed to “expend” the Lot for its intended purpose (development of second access) within five years from the dedication. Pursuant to RCW 82.02.030(3), the City is obligated to refund (i.e. return) the Lot, with interest.

4.4 Plaintiffs Developer respectfully request this Court to order the City to reconvey the Lot free and clear of all liens and encumbrances, plus pay interest in an amount to be proven at the time of trial.

V. SECOND CAUSE OF ACTION

UNCONSTITUTIONAL TAKING—INITIAL DEDICATION UNCONSTITUTIONAL

5.1 Plaintiffs Developer re-allege all of the foregoing paragraphs.

5.2 The City is currently asserting that the original required dedication of the Lot was not pursuant to RCW 82.02. The Developer learned of this allegation in August or September of 2009.

5.3 If the City’s position is correct, there is no foundation in law or fact for the City to impose the required dedication of the Lot (or the money) as part of the Orchard Estates Final Plat approval.

5.4 As such, the required dedication/conveyance of the Lot was an unconstitutional taking without just compensation in violation of state and federal statutes.

5.5 Developer respectfully requests that the Court enter an order finding that the original required dedication/conveyance of the Lot was an unconstitutional taking

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2 and award immediate return of the property plus interest and attorney's fees
3 incurred therein and any other damages proven at the time of trial.
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6 VI. THIRD CAUSE OF ACTION

7 UNCONSTITUTIONAL TAKING—ILLEGAL RETENTION OF PROPERTY

8 6.1 Plaintiffs Developer re-allege all of the foregoing paragraphs.

9 6.2 Pursuant to RCW 82.02, the City has the obligation to return the Lot
10 immediately upon notification and demand by the Developer.

11 6.3 The City's refusal and retention of the property is an unlawful taking of the
12 Developer's Lot and causing damage to the same.

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14 6.4 Developer respectfully requests this Court to enter an order that the City's
15 refusal to return and continue retention of the Lot is an ongoing unconstitutional
16 taking of property. Based upon such finding, the Court should order the City to
17 immediately reconvey the Lot to the Developer (free and clear of all encumbrances)
18 plus interest, attorney's fees, and other damages in an amount to be proven at the
19 time of trial.
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22 VII. FOURTH CAUSE OF ACTION

23 VIOLATION OF 42 USCA § 1983

24 7.1 Plaintiffs Developer re-allege all of the foregoing paragraphs.
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26 COMPLAINT - Page 6 of 8
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3 7.2 The City was acting under color of state law by imposing upon the Developer
4 the requirement to dedicate the Lot pursuant to RCW 58.17 and other state and
5 local statutes and ordinances.

6 7.3 The City's required dedication/conveyance of the Lot was an unconstitutional
7 taking as identified above. This unconstitutional taking of real property is a
8 deprivation of Developer's rights pursuant to both state and federal constitution, and
9 laws adopted thereunder. Such action is in violation of 42 USCA § 1983.

10 7.4 The Court is respectfully requested to find that the City has violated § 1983,
11 order that the City immediately return the Lot to Developer (free and clear of all
12 encumbrances), and award Plaintiffs their interest, attorney's fees, and damages in
13 an amount to be proven at the time of trial.
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16 **VIII. RELIEF REQUESTED**

17 8.1 Based upon the foregoing, Plaintiffs Developer respectfully request this Court
18 order:

19 A. The City immediately reconvey the Lot to Developer (free and clear of
20 all encumbrances) pursuant to RCW 82.02.020;

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22 B. The City unconstitutionally took the Lot in 2004 by imposing such
23 contribution as a condition of preliminary plat approval without just compensation or
24 authority in law;
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26 COMPLAINT - Page 7 of 8
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C. The City is unconstitutionally taking the Lot from the Developer by affirmatively refusing to return the Lot as requested;


D. The City be ordered to immediately reconvey the Lot (free and clear of all encumbrances) to the Plaintiffs because of said unconstitutional taking;

E. That judgment be entered against the City pursuant to applicable federal and state law for all damages, interest, and attorney's fees incurred herein in an amount to be proven at the time of trial;

F. For such other and further relief as the Court may deem just and equitable.

DATED this 16 day of February, 2010.

BELCHER SWANSON LAW FIRM, P.L.L.C.



DOUGLAS K. ROBERTSON, WSBA #16421
Attorney for Plaintiffs